

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 33586

STATE OF IDAHO,)	2009 Unpublished Opinion No. 644
)	
Plaintiff-Respondent,)	Filed: October 21, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
MONTIE WAN WESTMORELAND,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Seventh Judicial District, State of Idaho, Bonneville County. Hon. Richard T. St. Clair, District Judge.

Order denying I.C.R. 35 motion for correction of an illegal sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GUTIERREZ, Judge
and MELANSON, Judge

PER CURIAM

Montie Wan Westmoreland was charged with fleeing or attempting to elude a peace officer, Idaho Code § 49-1404(2)(b)(c), and with possession of a controlled substance, methamphetamine, I.C. § 37-2732(c)(1). Pursuant to a plea agreement, Westmoreland pled guilty to the charges and the state agreed to dismiss a separate case. The district court sentenced Westmoreland to concurrent unified terms of five years, with three years determinate for the fleeing charge and to seven years, with four years determinate, for the possession charge. Westmoreland filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Westmoreland filed a second Rule 35 motion for reduction of sentence, which the district court also denied. Westmoreland then filed a Rule 35 motion for correction of

an illegal sentence, which the district court denied. Westmoreland appeals from the denial of his Rule 35 motion, contending that the district court abused its discretion by denying his Rule 35 motion. He claims that he received an illegal sentence.

Mindful that a guilty plea waives all non-jurisdictional procedural defects in a case, Westmoreland nevertheless asserts that the district court erred by denying his Rule 35 motion for correction of an illegal sentence because, he claims, he “had never been arraigned on the charge of possession of a controlled substance.” Westmoreland’s argument is without merit.

It is well settled, and Westmoreland concedes, that a valid guilty plea, knowingly and voluntarily entered, is a judicial admission of all facts charged and waives all non-jurisdictional defects and defenses. *State v. Coffin*, 104 Idaho 543, 545, 661 P.2d 328, 330 (1983); *Heartfelt v. State*, 125 Idaho 424, 426, 871 P.2d 841, 843 (Ct. App. 1994); *Odom v. State*, 121 Idaho 625, 627, 826 P.2d 1337, 1339 (Ct. App. 1992). Westmoreland entered a knowing and voluntary guilty plea on September 7, 2004. In so doing, Westmoreland waived all non-jurisdictional defects and defenses. In its order denying Westmoreland’s Rule 35 motion for correction of an illegal sentence, the district court correctly concluded that because Westmoreland’s guilty plea was knowing and voluntary, it “constitutes a waiver of any defect in processing the amended criminal complaint by the magistrate.” Thus, Westmoreland has failed to establish error in the district court’s denial of his Rule 35 motion for correction of an illegal sentence.

Accordingly, the order of the district court denying Westmoreland’s Rule 35 motion is affirmed.